88-1504

Supreme Court, U.S.
FILED
MAR 2 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No. _____

Michelle M. Etlin, Petitioner,

v.

Vladimir N. Etlin, Respondent.

A P P E N D I X

IN SUPPORT OF

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF THE COMMONWEALTH OF VIRGINIA

Michelle M. Etlin, pro se
3009 Military Rd. NW
Washington, D.C. 20015

March 14, 1989

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

MICHELLE M. ETLIN,	:	
	:	IN CHANCERY
Complainant,	:	No. 68775
	:	
vs.	:	
	:	
VLADIMIR N.ETLIN,	:	
	:	
Defendant.	:	

O R D E R

THIS CAUSE came on to be heard Thursday, March 12, Monday, March 16, and Tuesday, March 17, 1987, upon the pleadings formerly filed herein, each party appearing in person and by counsel, and the Court heard the testimony of the parties and the witnesses in support and in opposition to each item before the Court, and received into evidence various documents, and

UPON CONSIDERATION of all of the evidence and the arguments of counsel had in open Court,

IT APPEARING TO THE COURT that the

Complainant, Michelle M. Etlin (the mother) has, from time to time, in prior hearings before this Court and in the Court in Oregon, had presented a demeanor of a nice, sweet person and a good mother with the best interest of her child being foremost in her mind, and had convinced the Court in prior hearings that Vladimir N. Etlin (the father), was an inflexible, unyielding, unfit father, and that the best interest of the child would be solely served by being with her, and

IT APPEARING TO THE COURT that the mother has been less than truthful with the Court, has been less than truthful in her dealings with others, and has conducted her affairs, particularly with respect to the child, in a manner that was deceitful and harmful to the child, causing the child to live a life of fraud as the child was carried with her all over

the world for the purpose of hiding from the father, and did so by carrying the child along with her to South Africa, Belgium, Canada and, ultimately, reposing in Oregon in a life in which he was obliged to live under a false name and under the threat that if he were to reveal his whereabouts to anyone and, in particular, his father, he would suffer a terrible punishment as a child, to-wit: he would lose the companionship of his mother, and

IT APPEARING TO THE COURT that the actions and conduct of the mother were designed solely for the purpose of denying to the father any means to see or visit his son, to share in any part of the son's life, and to deprive the child during the most important years of his life, four to nine, of any contact with his father, and

IT APPEARING TO THE COURT that the conduct by the mother amounted to cruelty and child abuse in which the mother put her own selfish interests ahead of the welfare of the child and to the detriment of the child, and

IT APPEARING TO THE COURT that as of today, this Court rejects the conclusions formerly made by Dr. Ganz to the effect it would be harmful for Danny to be around his father.

IT APPEARING TO THE COURT that the events that have taken place since the prior hearing have demonstrated that the best interests of the child are not served by being in the care and custody of the mother who has such little respect for the welfare of her child, the needs of the child, for the father, and for the lawful processes of the Court that she falsified records and fled into hiding with the child, and

IT APPEARING TO THE COURT that it has been disastrous for the child to live the life of fraud all over the world and to have been deprived of the natural contact with the father and to have been cruelly threatened with the loss of his mother forever if he in any way followed the natural instincts of a child to see his father, and

IT APPEARING TO THE COURT that the mother, in pursuit of her own selfish interests, and without regard to the welfare of the child, made the child aware selectively of portions of Court proceedings, the purpose of which was to enhance her role with the child, destroy the father's role with the child, and place a shield or barrier in the child's mind between the child and his father. It is the Court's opinion that the mother's conduct of telling her son about the cases and allowing him to read the

transcripts was near tantamount to child abuse, and

IT APPEARING TO THE COURT that the father intends to remain in residence in Falls Church, Virginia, and that the mother, when released from incarceration, will return to her home in the State of Oregon, and

IT APPEARING TO THE COURT that the father is a fit and proper person to have sole care and custody of said minor child and that under all the facts and circumstances now before the Court the best interests and welfare of the child will be served by awarding sole custody to the father for all of the reasons set forth (in brief) in this Order, as well as in the Court's oral findings on March 17, 1987, it is,

ORDERED, ADJUDGED AND DECREED that this court has jurisdiction to hear this cause which jurisdiction shall be con-

tinuing, and the Motion to transfer this case to Oregon is denied; and it is

ORDERED, ADJUDGED AND DECREED that the Motion of the mother, Michelle M. Etlin, for a change of custody for the child, Daniel A. Etlin, be and the same hereby is denied, and that the sole care and custody of said minor child shall be with and it hereby remains with the father, Vladimir N. Etlin, granting to the mother, Michelle M. Etlin, a right of visitation to be defined as one (1) month with the mother in Oregon during the summer of 1987, said month to be agreed between the parties or, if not agreed, then shall be the month of July and those weeks during the child's Christmas holiday from school. This visitation shall begin one (1) day after the beginning of the Christmas holiday; that is, the first day of the holiday shall be with the father, and the second day of the holiday

the child shall travel to the home of the mother in Oregon where he shall remain until two (2) days before school is to begin; that is, he shall return on a day to allow one (1) full day at home with the father before the start of school. It shall be the responsibility of the mother to pay for the airplane fares and arrange for the tickets and other transportation to and from Virginia to Oregon in order to comply with this Order of the Court, it being further understood that the Court will leave open the consideration of whether to expand same depending upon the circumstances then existing; and

IT IS FURTHER ORDERED that Mrs. Etlin shall be entitled to make a telephone call at her expense one (1) night a week from Oregon to talk to her son. The time and evening shall be agreed between the parties, but in the event that they

do not agree, then it shall be at 7:00 o'clock P.M. eastern time every Wednesday, the father being specifically directed to see to it that the son is present and available to receive the telephone call at that time or at such time as the parties have mutually agreed.

The summer and Christmas holiday visitation Order of the Court is based upon the presumption that the mother will continue her residence in Oregon and the father will continue his residence in Falls Church, Virginia; and

IT IS FURTHER ORDERED that the mother shall not, on any occasion, take the child except at the times specified in this Court Order or any Amended Court Order, and shall not take the child outside of the continental United States, and that the mother shall advise Ann Cook and Loretta Dunn, of the Department of Social Services, and the father of any

and all travel plans and such places outside of her home in Oregon, giving addresses and phone numbers if she travels with her son from her home in Oregon; and

IT IS FURTHER ORDERED that neither parent shall make any remark that is derogatory of the other to the child or in the presence of the child, nor shall either party discuss this case or display any copies of transcripts or pleadings to the child; and

IT IS FURTHER ADJUDGED that Michelle M. Etlin is guilty of a willful contempt of this Court because of her failure to obey the judgment of this Court in that she permanently removed the child, falsified records and fled with the intent of depriving the father of his right of reasonable visitation and the child of a natural association with his father; and

IT IS ORDERED that Michelle M. Etlin be committed to the Sheriff of Fairfax County, Virginia, to the County jail to be there detained in custody for a term of twelve (12) months, of which sentence ten (10) months are suspended, conditioned upon her strict compliance with each and every order of this Court concerning custody, visitation and her conduct towards the child, and she is further placed on three (3) year's inactive probation, and the suspension will continue for that period of three(3) years, conditioned upon her strict compliance with each and every Order of this Court concerning custody, visitation and her conduct toward the child, and

IT IS FURTHER THE ORDER OF THE COURT that the mother is to have a visitation with her son before her return to Oregon, provided, however, said visitation shall be conducted solely in the presence

of Loretta Dunn or such other social workers as may be available, and the Department of Social Services shall remain involved in this case, advising the Court from time to time of any deviation of the parties from this Order; and

IT IS FURTHER ORDERED that Michelle M. Etlin shall forthwith surrender her passport to the Court where it shall be sealed and removed only by leave of Court and any passport that she has for her son, Danny, shall be forthwith surrendered to Mr. Etlin and that she shall not apply for any new passport without further order of this Court; and

IT IS FURTHER ORDERED that upon Michelle Etlin giving the Clerk of this Court her name and address where she can be served with process within Virginia and without Virginia, then Robert Surovell is withdrawn from this case as

counsel. Service upon Michelle Etlin out of the state of Virginia by certified mail is hereby authorized; and

IT IS FURTHER ORDERED that Michelle Etlin shall pay child support to Vladimir Etlin in the sum of $250.00 per month, the first payment to be made on or before May 1, 1987, which payment shall be for the month of April, 1987, with each monthly payment thereafter being due on the first day of each succeeding month; and

IT IS FURTHER ORDERED that Vladimir Etlin be, and he hereby is, awarded $8,800 as and for reimbursement for attorney's fees incurred in these Virginia proceedings; and

IT IS FURTHER ORDERED that a suspending bond is hereby authorized at $10,000.00 with competent surety; and

THE CAUSE IS CONTINUED.

ENTERED: March 25, 1987

s/F. Bruce Bach
THE HONORABLE F.
BRUCE BACH
FAIRFAX COUNTY CIR-
COURT COURT JUDGE

WE ASK FOR THIS:

FRIEDLANDER & FRIEDLANDER, P.C.

By: s/Jerome Friedlander
Jerome F. Friedlander, II and
James J. Harney, Counsel for
Vladimir N. Etlin
2018 Clarendon Boulevard
Arlington, Virginia 22201
703-525-6750

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VIRGINIA:
In the Court of Appeals of Virginia
on Wednesday, the 6th day of April, 1988.

Michelle M. Etlin, Appellant,
against Record No. 0465-87-4
Circuit Court No. 68775
Vladimir N. Etlin, Appellee.

Upn an appeal of right from a judgment rendered by the Circuit Court of Fairfax County on the 25th day of March, 1987.

Before Judges Hodges, Keenan and Moon

Michelle M. Etlin (mother) appeals from a decision in which the trial court found her in contempt of court and granted Vladimir N. Etlin (father) custody of their minor child Daniel. The

issues presented in this appeal are: (1) whether the trial court erred in finding the mother in contempt of court; (2) whether the trial court had jurisdiction to determine Daniel's custody; and (3) whether there was evidence to support the trial court's ruling that an award of custody to the father was in the best interests of the child.

Initially, we find that the mother's contempt conviction is not properly before this Court in this Appeal. Code §19.2-318 provides that an appeal from a judgment of criminal contempt must be sought here by a petition for a writ of error. Since a writ of error was not sought from the mother's contempt conviction, we do not consider the merits of the issue.

Second, we find that in accordance with Code § 20-126(A)(2), the evidence of record was sufficient to support the

trial court's finding that it had jurisdiction to determine Daniel's custody.

Third, in examining the trial court's custody determination, we apply the following standard of review: "The trial court's decision, when based upon an ore tenus hearing, is entitled to great weight and will not be disturbed unless plainly wrong or without evidence to support it." Simmons v. Simmons, 1 Va. App. 358, 361, 339 S.E.2d 198, 199 (1985). In the case before us, the evidence showed that the mother had completely deprived the child of contact with his father for over four years. During this time, the mother had the child assume and live under a false name. Further, the trial court heard evidence that the mother told the child that if he telephoned his father, he would probably never be able to see her again. After hearing this and all of the other evi-

dence, the trial court concluded that the best interests of the child required an award of custody to the father. Upon review of the evidence placed before the trial court, we find that its custody determination was not plainly wrong or without evidence to support it. Id. at 361, 339 S.E.2d at 199. Accordingly, the decision of the trial court is affirmed. The appellant shall pay to the appellee damages according to law.

This order shall be certified to the trial court.

A Copy,

Teste:

David B. Beach, Clerk

By: s/signature

Deputy Clerk

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VIRGINIA:
In the Court of Appeals of Virginia
on Friday, the 24th day of June, 1988.

Michelle M. Etlin, Appellant,
against Record No. 0465-87-4
Circuit Court No. 68775
Vladimir N. Etlin, Appellee.

Upon a petition for rehearing.

Before Judges Hodges, Keenan and Moon

On consideration of the Petition of the Appellant to set aside the judgment rendered herein on the 6th day of April, 1988, and grant a rehearing thereof, the said Petition is denied.

A Copy,

Teste:

David B. Beach, Clerk

By: s/Deborah A.R. Clem

Deputy Clerk

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VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday, the 14th day of December, 1988.

Michelle M. Etlin, Appellant,

against Record No. 880845
Court of Appeals No. 0465-87-4

Vladimir N. Etlin,

From the Court of Appeals of Virginia

Upon review of the record in this case and consideration of the argument submitted in support of the granting of an appeal, the Court is of the opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal.

A Copy,

Teste:

David B. Beach, Clerk

by: s/signature

Deputy Clerk

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V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

MICHELLE M. ETLIN Complainant and Cross-Defendant	:	
v.	:	In Chancery 68775
VLADIMIR N. ETLIN Defendant and Cross-Complainant	:	

ORDER

THIS CAUSE came on to be heard, commencing on the fifteenth day of January, 1981, upon the motion of complainant, Michelle M. Etlin, for permanent custody of the minor child of the parties, Daniel Etlin, and upon the cross-motion of defendant, Vladimir N. Etlin, for permanent custody of the minor child of the parties, and, in the alternative, for visitation with said minor child; and upon the further motions of complainant for an award of child support, pendente lite spousal support and counsel fees; and upon consideration of the testimony of the parties, the testimony of the

witnesses who appeared before the Court on the fifteenth day of January and the twentieth day of January, 1981, upon the exhibits introduced and admitted into evidence by the respective parties and upon consideration of argument by counsel for the respective parties, it is hereby

ADJUDGED, ORDERED AND DECREED that permanent care, custody and control of the minor child, Daniel Etlin, be and the same is hereby awarded to complainant, Michelle M. Etlin; and it is further

ADJUDGED, ORDERED AND DECREED that the defendant, Vladimir N. Etlin, be and he is hereby awarded visitation privileges with said minor child every other Saturday, beginning at 5:00 o'clock p.m. until Sunday at 5:00 p.m. and, in addition, a visitation privilege with said minor child for one week during the month of July in each year; and the defendant is to have such other reason-

able visitation times with the minor child as the complainant shall deem to be appropriate; and it is further

ADJUDGED, ORDERED AND DECREED that during such visitation periods between the minor child and the defendant, in the event the minor child needs medical attention on an emergency basis, the defendant is responsible for seeking out that emergency care, but the defendant shall also immediately notify the complainant so that the complianant may be available, as quickly as possible, to assist in having assistance rendered to the child, and the defendant is otherwise prohibited from seeking medical attention or treatment for the minor child; and it is further

ADJUDGED, ORDERED AND DECREED that the defendant be and he is hereby ordered and directed to pay the sum of $400.00 per month to the complainant for the sup-

port and maintenance of the minor child, said monthly child support payments to be paid without demand and without deduction on the first day of the month, commencing with the month of February, 1981; and it is further

ADJUDGED, ORDERED AND DECREED that the defendant be and he is hereby ordered to maintain the child and the complainant on his present hospitalization and major medical insurance policy; the complainant shall be maintained by the defendant on such policy until such time as a final decree of divorce is entered between the parties in this cause, and the child is to be maintained by the defendant on said insurance until further Order of the Court; and it is further

ADJUDGED, ORDERED AND DECREED that the Court makes no award to the complainant of spousal support at this time; this decision is made without prejudice, however, for the complainant to raise this issue and have it heard on its merits when the divorce case is heard on its merits to determine if the complainant is entitled to spousal support at that time; and it is further

ADJUDGED, ORDERED AND DECREED that the defendant be and he is hereby ordered to pay to the complainant the sum of $500.00 pendent lite counsel fees and the following costs: $32.25 for filing and service fees; and $456.20 for the transcript reporter, all of the foregoing amounts to be paid by defendant to complainant on or before March 6, 1981.

AND THIS CAUSE IS CONTINUED.

ENTERED this 26th day of February, 1981.

s/Lewis Hall Griffith
THE HONORABLE LEWIS H. GRIFFITH, JUDGE, Circuit Court of Fairfax County, Virginia

By:

s/Sanford K. Ain
SANFORD K. AIN
4085 Chain Bridge Road, Suite 203
Fairfax, Virginia 22030
331-7120
Counsel for Complainant

A Copy Teste:
Warren E. Barry
Clerk

By: Genevieve Apostolakis
Deputy Clerk

Seen and exception noted:

s/Stefan C. Long
STEFAN C. LONG
121 South Royal Street
Alexandria, Virginia 22313
549-8821

Counsel for Defendant

s/Vladimir Etlin
Vladimir N. Etlin

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VIRGINIA:
IN THE CIRCUIT COURT OF FAIRFAX COUNTY

	F I L E D	
MICHELLE M. ETLIN	:	Apr.17 1981
Complainant	:	James E.Hoofnagle
Cross-Defendant	:	Clerk of the Circuit Court of
v.	:	Fairfax County, VA
VLADIMIR N.ETLIN	:	
Defendant and Cross-Complainant	:	In Chancery No. 68775

MOTION TO DISQUALIFY

COME NOW Defendant/Cross-Complainant, Vladimir N. Etlin, pro se, and move this Court to disqualify Lewis H. Griffith, Judge of this Court, from presiding at the trial over the case NO. 68775 pursuant to Code of Virginia 17-7(1)(2), 19.2-153 and in support whereof say as follows:

1.)Judge L.H.Griffith is so situated in respect to this case as to render it improper because:

a)Defendant/Cross-Complainant, Vladimir N.Etlin, has filed his Complaint against Judge Griffith in the United

States District Court.

Submitted respectfully
s/Vladimir N. Etlin
Vladimir N. Etlin
pro se
7403 Lisle Ave.
Falls Church, VA 22043
Tel: 356-3106

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V I R G I N I A :
IN THE CIRCUIT COURT OF FAIRFAX COUNTY

MICHELLE M. ETLIN	)	F I L E D
Complainant and	)	Feb.5 1982
Cross-Defendant	)	James E. Hoofnagle
v.	)	Clerk of the Cir-
	)	cuit Court of
VLADIMIR N.ETLIN	)	Fairfax County
Defendant and	)	
Cross-Complainant	)	

MOTION TO SET ASIDE COURT ORDER

COME NOW the defendant and cross-complainant, Vladimir Etlin, pro se and move this Court to set aside the Order of February 26, 1981 for fraud upon this Court, pursuant 8.01-428, 430 and 680, of the Virginia Code and Rule 60 of the Federal Rules of Civil Procedures, and asks to award joint or sole custody of

his son, Daniel Etlin, and in support says the following:

1). Complainant, Michelle Etlin, her lawyer, S.Ain, and expert witness, Dr. J.Ganz, had defrauded this Court at the hearing of January 15 and 20, 1981.

2). Because of the complainant's fraud at the hearing of January 15 and 20, 1981, the defendant's rights for equal protection and due process of the hearing were violated.

3). Because of fraud this Court's judgment of February 26, 1981 was plainly wrong.

4). It is in the best interest of the parties' son Daniel Etlin, to have frequent and continuing contact with both parents and to be in the custody of both parents or in the custody of his father, Vladimir Etlin, who can ensure

his son's frequent contact with his mother.

Respectfully submitted

s/Vladimir Etlin
Vladimir N.Etlin, pro se
7403 Lisle Ave.
Falls Church, VA. 22043
Tel.: 3563106

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion to set aside order has been hand delivered to the complainant's counsel, S.Ain, at 4085 Chain Bridge Rd. Suite 203, Fairfax, VA. 22030 on this 5th day of February, 1982.

s/V.Etlin

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Transcript of Proceedings June 2, 1982, Oral Ruling of Judge F. Bruce Bach

P R O C E E D I N G S

***

THE COURT: Get your pencil out, Mr. Etlin, so you can write down--so you'll know what I'm going to say.

Number one, I find no credible evidence of fraud or failure to produce documents; that's a finding of fact.

Insofar as the decision on the rest of the things, I fully note that Mrs. Etlin is not going to be happy and Mr. Etlin is not going to be happy.

Dr. Ganz has mentioned appeasement, and I thought of Neville Chamberlain and I readily acknowledge I may be making a heck of a mistake, Mr. Etlin, in trying to appease you or trying to give you the benefit of a doubt on a lot of these matters because you are the father.

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V I R G I N I A :
IN THE CIRCUIT COURT OF FAIRFAX COUNTY

MICHELLE M. ETLIN)
versus) Chancery No.68775
VLADIMIR N.ETLIN)

ORDER

THIS CAUSE CAME to be heard on October 1st and 15th, 1982, upon Defendant's motion to Change Custody, and upon a Rule to Show Cause Order returnable on October 1, 1982, which was duly served upon the Complainant's counsel of record,

Charles Geschickter, Jr., and upon the Complainant by posting; and

IT APPEARING TO THE COURT that ... the Commonwealth of Virginia is the home State [sic] of the parties' son, Daniel Etlin, ...

UPON CONSIDERATION WHEREOF, ... the Complainant has failed to comply with the orders fo this Court and is in direct and willful contempt of this Court's orders of June 2, September 2nd and September 21, 1982 by consistently denying Defendant's visitation with his son, by denying Defendant telephone contacts with his son, by denying Defendant's participation in his son's activities and by failing to appear at this Court's hearing on October 1, 1982; * * *

ORDERED that permanent care, custody and control of the minor child, Daniel Etlin, be and the same is hereby awarded to the Defendant, Vladimir Etlin; * * *

Entered this 26th day of October, 1982.

s/F. Bruce Bach

JUDGE F. BRUCE BACH

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IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

BENCH WARRANT
(CAPIAS)

COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX

CHANCERY NO. 68775

IN RE:
MICHELLE MOSS ETLIN
White Female
approximately 38 years old
5'4"
Brown hair Brown eyes
SSN: 152-34-9549

Last Known Address:
Okaloosa County, Florida
Near Fort Walton Beach

To Any sheriff or Police officer,
Greetings:
* * *
WHEREAS, it appears from court records and the affidavit of VLADIMIR N. ETLIN that MICHELLE MOSS ETLIN intentionally misstated facts to this court and misled this court when she appeared before it on September 3, 1982 and that a rule to show cause why she should not be tried for criminal contempt has been brought

against MICHELLE MOSS ETLIN. * * *

THEREFORE, ... I command you to apprehend the said MICHELLE MOSS ETLIN, and bring her before the Judge of our Circuit Court of Fairfax County, Virginia, FORTHWITH, to show cause, if any she can, ... why she should not be held in criminal contempt of this Court for intentionally having misstated facts to this Court and misled this Court.

AND HAVE THEN AND THERE THIS WRIT AND MAKE RETURN HOW YOU HAVE EXECUTED THE SAME.

GIVEN under my hand and the seal of this Court this 3rd day of May, 1985 and in the 209th year of the Commonwealth.

s/F.Bruce Bach
F.BRUCE BACH, Judge

(EXECUTE AND RETURN THE ORIGINAL)
Executed this __ day of _____, 19__
FBB BOND SET AT: $10,000.00 cash
or corporate surety
DATE OF HEARING: returnable to the 1st Friday at 10:00 o'clock a.m. after MICHELLE MOSS ETLIN is apprehended.

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Excerpt of transcript of proceedings on February 20, 1987, page 10:

COURT: "... I think it's very important that [Mr. Etlin] understands that she's paid her debt to society, and that you don't violate court orders willy-nilly, and that when you do, there's serious consequences to pay, and tht he can look at it in some way other than, 'she got away with something that injured this child and certainly injured him,' although my concern is for the child.

So frankly, I'm going to revoke the bond, and I do revoke the bond right now and if I need to put other grounds in the warrant, I'm going to do it.

And I don't know how long I'm going to keep her in jail. I'll listen to your argument."

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Quotation from Mother's Petition for

Rehearing to the Court of Appeals:

Rule 5A:1(a)(1) defines "appeal" to include "writ of error." It is not appropriate, especially in a case of such importance, to elevate form over substance, and Virginia authority so holds.

> "Although the statute provides that a 'writ of error' shall lie in contempt cases, **where the Court has before it every requisite necessary for the granting of a writ of error, the Court will treat the indorsement of the fact that an 'appeal' and not a 'writ of error' was granted as mere inadvertence**. [emphasis supplied] citing Michie's Jurisprudence, §35, Vol.4A at 583-4, citing Roanoke Water Works Co. v. Roanoke Glass Co., 144 S.E. 460 (1928).

Petition for Rehearing to Court of Appeals, April 17, 1988, page 2.

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V I R G I N I A :
IN THE CIRCUIT COURT OF FAIRFAX CO.

MICHELLE M. ETLIN	:	
Complainant,	:	IN CHANCERY
v.	:	68775
VLADIMIR N. ETLIN	:	
Defendant.	:	

MEMORANDUM OF POINTS AND AUTHORITIES

FIRST QUESTION PRESENTED

DOES A CIRCUIT COURT IN VIRGINIA HAVE SUBJECT MATTER JURISDICTION TO CHANGE CUSTODY OF A CHILD PURSUANT TO §20-108 OF THE CODE OF VIRGINIA WHEN THE CHILD HAS BEEN A NON-RESIDENT OF VIRGINIA FOR SIX-AND-A-HALF YEARS PRECEDING THE DATE OF THE HEARING?

* * *

What makes this case unusual is that the migrating parent was the party who prevailed, and that the losing parent who persisted time and time again in challenging custody did so intrastate, not interstate. ... Her purpose in departing was not to seek a more favorable forum, but rather to remove herself and the child from the very real abuses of litigation which the statute seeks to eliminate on an interstate basis. * * *

the mandatory obligations of §20-132 and §20-128 were violated [by the Virginia court] as well affecting the validity of the June, 1982 Order and the October 26, 1982 Order.

Quoted from Memorandum of Points and Authorities filed March 11, 1987 with pretrial motions, pp. 1,3,5.

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Quotation from Mother's Petition for Review to the Supreme Court of Virginia, dated July 22, 1988:

Jurisdiction is a threshold determination of such importance to any custody decision that a fair trial cannot be held in one state if another state has a closer connection with the child. ... the child is entitled to have matters concerning his custody decided in the forum which has the maximum access to relevant information concerning his welfare, regardless ot the convenience of his parents.

Petition for Review to Virginia Supreme Court, July 22, 1988, at p. 25.

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Excerpt from Mother's Petition for Review by Supreme Court of Virginia:

"Even the Court of Appeals, although it is a relatively new court, has heard and reversed criminal contempt convictions brought by way of appeal. See, e.g., Carter v. Commonwealth, Record No. 0102-85, Court of Appeals of Virginia, June 17, 1986, 345 SE 2d 5 (1986). In that case, a criminal defendant ... was held in criminal contempt and sentenced to ten days. He brought an appeal, not a writ of error, and the Court of Appeals reviewed and reversed the trial court per Justices Baker, Barrow and Hodges (including one of the same judges empaneled in the instant appeal)."

Petition for Review to Supreme Court of Virginia, July 22, 1988, pp. 8-9.

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Excerpt from Mother's Petition for Rehearing to the Virginia Court of Appeals:

Section 20-126(A)(2), the Virginia

counterpart of the UCCJA, vests jurisdiction in the Court when:

> "It is in the best interest of the child that a Court of this state assume jurisdiction because (i) the child and his parents, or the child and at least one contestant, have a significant connection with this state, and (ii) there is available in this state substantial evidence concerning the child's present or future care, protection, training and personal relationships;"

Jurisdiction is a threshold determination of such importance to any custody decision that a trial cannot be appropriately held in one state if another state has a closer connection with the child. ... According to the Commissioner's [sic] commentary on the UCCJA, Section 20-126(A)(2), more than any other section, must yield to conservative interpretation so as not to operate contrary to the purposes of the UCCJA. The cases encourage judicial restraint, not jurisdictional aggression (whether punitive or based on judicial

hubris), to ensure that custody decisions are made in the state with maximum access to relevant information, and to prevent instability in custodial arrangements.

* * *

There was not significant evidence in Virginia concerning Daniel in 1987; in fact, the record on appeal provides absolutely no showing of sufficiency of evidence available in Virginia upon which to base an appropriate custody evaluation. The Department of Social Services was directed, on February 20, 1987, to investigate Daniel's life in the four years that he was away, but that investigation was halted by Judge Bach himself, who candidly admitted that he didn't want the information developed by the department. He also announced, at the opening of the trial, that he was not considering the "usual" things considered in a custody trial. In fact, he

considered only one fact: the fact that

Mrs. Etlin had disobeyed <u>his</u> order.

Mother's Petition for Rehearing, April 17, 1988, pp. 11-13.

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Excerpts from transcript of February 20, 1987:

SUROVELL: Your Honor, ... based on the statute of limitations, 29.1-8, ... the show cause order was issued March -- I'm sorry, May of 1985, alleging within the body of the warrant, and also, in the affiavit in support of the warrant, acts that occurred in 1982, and no subsequent acts.

* * *

And I'd call your attention to the fact, and I'm prepared to prove this morning, and I don't think it's controverted, that the defendant here was, since 1980, a resident in the State of Maryland, and thereafter, the resident of other states, and that the concept of flight from arrest, contemplates a necessity for residency here in Viginia because the misdemeanor powers of the Court do not extend beyond the borders.

COURT: Let me simply say that her offense, or her contempt, while it may not state it in that bench warrant in May, was a continuing thing, and it continued right up until a couple of days ago. So I'll issue a new bench warrant.

Transcript, February 20, 1987, pp. 6-7.